

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES SECURITIES AND) Docket No. 18 C 5587
EXCHANGE COMMISSION,)
)
Plaintiffs,)
)
vs.)
)
EQUITYBUILD, INC., EQUITYBUILD)
FINANCE, LLC, JEROME H. COHEN,)
AND SHAUN D. COHEN,) Chicago, Illinois
) May 6, 2022
Defendants.) 9:00 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - VIDEOCONFERENCE STATUS
BEFORE THE HONORABLE JOHN Z. LEE

VIDEOCONFERENCE APPEARANCES:

For the Plaintiff: U.S. SECURITIES & EXCHANGE
COMMISSION
BY: MR. BENJAMIN J. HANAUER
175 W. Jackson Blvd., Suite 900
Chicago, Illinois 60604

For the Receiver: RACHLIS, DUFF, PEEL & KAPLAN, LLC
BY: MR. MICHAEL RACHLIS
MS. JODI ROSEN WINE
542 South Dearborn, Suite 900
Chicago, Illinois 60605

For Federal Home Loan Mortgage Corporation, DYKEMA GOSSETT, PLLC
BY: MR. TODD GALE
Wilmington Trust, Citibank, 10 South Wacker Drive, Suite 2300
Federal National Mortgage Chicago, Illinois 60606
Assoc., U.S. Bank, Sabal TL,
Midland Loan Svcs., BC57,
and UBS AG:

1 VIDEOCONFERENCE APPEARANCES (Cont'd):

2 For Midland Loan AKERMAN, LLP
3 Servicing: BY: MR. MICHAEL D. NAPOLI
4 2001 Ross Avenue, Suite 3600
Dallas, Texas 75201

5 For 1839 Fund I, LLC: MR. MICHAEL O. KURTZ
6 5630 N. Ashland Avenue, Apt 1
Chicago, Illinois 60660

7
8 For U.S. Bank as Trustee: FOLEY & LARDNER, LLP
9 BY: MR. ANDREW T. McCLAIN
321 N. Clark St., Suite 2800
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11 For Ventus Holdings, LLC LATIMER LEVAY FYOCK LLC
12 and Ventus Merrill, LLC: BY: MS. SASKIA N. BRYAN
55 West Monroe Street, Suite 1100
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14 For Thorofare Asset Based TAFT, STETTINIUS & HOLLISTER, LLP
15 Lending Reit IV, LLC: BY: MR. WILLIAM J. SERRITELLA, JR.
111 East Wacker Drive, Suite 2800
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17 For Capital Investors: GARDINER, KOCH, WEISBERG & WRONA
18 BY: MS. SHANNON V. CONDON
53 W. Jackson Blvd., Suite 950
Chicago, Illinois 60604

19
20 For Intervening Investors: BOODELL & DOMANSKIS, LLC
21 BY: MR. MAX A. STEIN
1 North Franklin, Suite 1200
Chicago, Illinois 60606

22

23

24

25

1 VIDEOCONFERENCE APPEARANCES (Cont'd):

2 Also Present: MR. KEVIN B. DUFF, Receiver
3 MR. DAVID MARCUS
4 MR. DAVID A. JOHNSON
5 MR. MEHERNOSH PITTMAN
6 MR. ARNOLD KAMEDA
7 MS. JANE SHAFRIN
8 MR. GAR WEATHERHEAD
9 MR. HOWARD SLOMKA

7 Court Reporter: MR. JOSEPH RICKHOFF
8 Official Court Reporter
9 219 S. Dearborn St., Suite 2128
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11 * * * * *

12 PROCEEDINGS RECORDED BY
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1 (Proceedings had via videoconference:)

2 THE COURT: This is Judge Lee. Everyone who is on
3 the call, unless I give you permission to speak, please mute
4 your phones. That is the only way this is going to work. I'm
5 going to give everyone a chance to please mute your phone.
6 And I can see when people's phones are muted.

7 UNIDENTIFIED SPEAKER: I don't know how to do mute.
8 I'm not quite sure how to do that.

9 THE COURT: Carmen, go ahead and call the case.

10 THE CLERK: 18 CV 5587, United States Securities and
11 Exchange Commission vs. Equitybuild.

12 THE COURT: Who is appearing on behalf of the SEC?

13 MR. HANAUER: Good morning, your Honor, Ben Hanauer
14 for the SEC.

15 THE COURT: And who is appearing on behalf of the
16 receiver?

17 MR. RACHLIS: Good morning, your Honor, Michael
18 Rachlis and Jodi Rosen Wine on behalf of the receiver. The
19 receiver is also on this video call.

20 THE COURT: All right.

21 Who are the other attorneys who have filed their
22 appearance, if you want to enter your appearance for the
23 record.

24 Let's start with Mr. Stein.

25 MR. STEIN: Good morning, your Honor, Max Stein on

1 behalf of a group of claimants.

2 THE COURT: Mr. Napoli.

3 MR. NAPOLI: Good morning, your Honor, Michael Napoli
4 on behalf of Midland Loan Servicing.

5 THE COURT: Mr. Kurtz.

6 MR. KURTZ: Good morning, your Honor, Michael Kurtz
7 on behalf of claimant 1839 Fund I, LLC.

8 THE COURT: Mr. McClain.

9 MR. McCLAIN: Good morning, your Honor, Andrew
10 McClain on behalf of Fannie Mae, U.S. Bank as trustee and
11 Citibank as trustee.

12 THE COURT: Mr. Gale.

13 MR. GALE: Good morning, your Honor, Todd Gale on
14 behalf of BC57, LLC.

15 THE COURT: Are there any other attorneys who have
16 entered their appearance who would like to enter their
17 appearance today?

18 (No response.)

19 THE COURT: All right. Before we --

20 MS. CONDON: Judge --

21 THE COURT: Go ahead.

22 MS. CONDON: Shannon Condon on behalf of Equitybuild,
23 a claimant. I'm sorry, Capital Investors, claimant.

24 MS. BRYAN: Good morning, your --

25 THE COURT: So --

1 MS. BRYAN: Good morning, your Honor, Saskia Bryan on
2 behalf of Ventus Merrill and Ventus Holdings, intervenors.

3 Thank you.

4 MR. SERRITELLA: Good morning, your Honor, this is
5 Bill Serritella on behalf of Thorofare Asset Based Lending
6 Fund IV, LLC.

7 THE COURT: Okay.

8 So, the receiver submitted the receiver's 15th status
9 report on April 29th. I trust that everyone who is on this
10 call has had a chance to review it. If you haven't, it's
11 available through the receiver's Web site, the Web site that's
12 established by the receiver. If you don't know what that is,
13 you can go ahead and reach out to Mr. Rachlis or Ms. Wine, who
14 are the attorneys for the receiver, to get that information.

15 Mr. Rachlis, a couple of questions. I see that the
16 accounts for the 105 property-specific, interest-bearing
17 accounts that hold all the proceeds from the sale of the real
18 estate, they total amount to a little bit more than \$70
19 million.

20 Is that correct?

21 MR. RACHLIS: That is correct, your Honor.

22 THE COURT: What are the -- do you know --

23 THE COURT REPORTER: Judge, I'm sorry, I'm getting a
24 lot of feedback from the other people. If we could ask to
25 mute phones, again?

1 THE COURT: Unless I give you permission to talk,
2 please mute all your phones or I'm going to end this hearing,
3 because otherwise we can't continue.

4 (Brief pause.)

5 THE COURT: Again, if you are participating in this
6 call, number one, do not use a speakerphone; and, number two,
7 mute your phones, unless you are given leave to speak.

8 (Brief pause.)

9 THE COURT: So, Mr. Rachlis, what is the total amount
10 -- if you add up all the claims, what would be the total
11 amount of all of the claims?

12 MR. RACHLIS: I believe -- and I'm going to also --
13 if Ms. Wine has a different amount in mind, I'll ask her, as
14 well. But I believe it's about \$135 million.

15 THE COURT: So, it's about twice as much as the cash
16 that is available based upon the sale of the properties?

17 MR. RACHLIS: I believe that's correct.

18 THE COURT: Okay.

19 So, we had a brief status with regard to the various
20 motions and whatnot on the case, as well as where we are with
21 regard to the Group 1 properties, at the last hearing.
22 Today's hearing is really a chance for those claimants who
23 have notified the receiver that they want to be heard, to be
24 heard, not only by me, but by the receiver, as well as the
25 SEC. I think that these opportunities are important, just to

1 provide the claimants with a voice and to raise their
2 concerns.

3 Given the number of claimants, however, that have
4 asked to address the Court, I know originally I had allotted
5 five minutes per claimant. But just to make sure that
6 everyone has an opportunity to voice their concerns or have
7 their say, I'm going to have to limit the comments to about
8 three minutes for each claimant.

9 So, let's go ahead and start.

10 First of all, Mr. David Marcus. Are you on the line
11 with us today?

12 MR. MARCUS: Yes, I am, your Honor.

13 THE COURT: All right. Go ahead, Mr. Marcus. You
14 can go ahead and start now.

15 MR. MARCUS: Well, let me just say good morning to
16 everyone there. I'm in the eighth tranche. We're still in
17 the first tranche. I'm in the eighth tranche. And I'd like
18 to know, Judge Lee, when do you expect to get to my eighth
19 tranche?

20 And that would be interesting for me to know because
21 this is taking way too long. So, that's number one.

22 Unfortunately, I don't think -- further ahead, August
23 will be four years since this started. I cannot afford to
24 wait two, three, four more years, and I won't wait four more.
25 I just won't do that. I need to have something. There's no

1 sense of urgency right now in the courts, and I have to put a
2 sense of urgency there. I have 1,370,000 reasons to do what
3 I'm doing.

4 You know, I appreciate that the Court is giving me a
5 chance to talk. I hope I have a lot more chances in the
6 future. At this point, I just want to say Max Stein does not
7 represent my interests whatsoever.

8 So, the thing is, Judge, I appreciate your letting me
9 speak. I'm not in the best of moods now. I just -- I'm
10 getting over COVID, so I'm not in great shape now. Anyhow, I
11 wanted -- I look forward to talking with you in the future.

12 But I still need to know that eighth tranche, when do
13 you -- do you have any plan for when we're going to get there?

14 THE COURT: All right. Thank you, Mr. Marcus.

15 With regard to the timing of the tranche, the reason
16 why we have not set out a certain time frame is because the
17 hope and belief is that once we get through the first group,
18 that will set some ground rules and it will provide the
19 claimants with some guidance on how I would rule with regard
20 to the other properties along the way.

21 And, so, while I can't give you a specific time frame
22 at this point, Mr. Marcus, and to the other claimants on the
23 phone, what I would tell you is after this first group is
24 done, I anticipate that things will go much faster. It is
25 also my hope and plan that after I issue my ruling with regard

1 to the first group, that we get together and see if there is a
2 possibility of taking all of the claimants into some sort of
3 mediation, either with the Court's assistance or with the
4 assistance of Magistrate Judge Kim, to see if we can come to a
5 quicker resolution and a settlement with regard to the
6 remaining claims. That is why I wanted to know how many --
7 what the total amount or value of all the claims were versus
8 the amounts that we have on hand.

9 So, thank you, Mr. Marcus.

10 We'll now go to Ms. Roswitha Ennema. Are you on the
11 phone with us?

12 (No response.)

13 THE COURT: Roswitha Ennema, E-n-n-e-m-a.

14 (No response.)

15 THE COURT: All right. We'll come back to her.

16 What about Jim Tutsock? Mr. Tutsock, are you with
17 us?

18 (No response.)

19 THE COURT: T-u-t-s-o-c-k, Jim Tutsock.

20 (No response.)

21 THE COURT: What about David A. Johnson?
22 Mr. Johnson, are you with us today?

23 MR. JOHNSON: Yes, I'm here, Judge.

24 THE COURT: Go ahead, Mr. Johnson.

25 MR. JOHNSON: Basically, my comments were exact as

1 the person who just spoke. That on behalf of all of the
2 individual investors, it's -- you know, I think the process
3 started in 2018. It's taking a long time. And I've never
4 gone through this before. I'm waiting to find some
5 resolution. What would be helpful is to know what month or
6 even year this may wrap up.

7 So, I appreciate the comments that, Judge, you just
8 gave. That helps. But we're really trying to figure out,
9 like, is this going to end, you know, this year, next year,
10 two years from now? We have no idea. Every time we ask the
11 receiver, they basically say, you know, there's this, that and
12 the other thing; there's a lot of things going on; we can't
13 really give you an answer, which is -- you know, leaves us in
14 a state of confusion.

15 Thank you.

16 THE COURT: Thank you, Mr. Johnson.

17 Yes, as I said previously, I think we'll have a much
18 better idea of how much longer the entire process will take
19 after we get through first group of claims.

20 And there's also the issue of the properties where
21 there's only one claimant. And once I rule on that issue,
22 again, I think we'll have a much better idea as far as time
23 frames go.

24 And, so, I understand the frustration, but given the
25 fact that there are twice as many claims -- of the value of

1 claims -- as there is cash available, the process needs to
2 make sure that everyone's rights are adequately protected.

3 So, I completely understand the sentiment people have
4 and the frustration that you have, but we are trying -- I'm
5 trying to resolve this in the most fair and efficient and
6 expedited manner possible.

7 Let's now turn to Dean Atanos- I'm sorry,
8 A-t-a-n-a-s-o-s-k-i. Atanasoski, Dean?

9 (No response.)

10 THE COURT: What about Yaron Fisher?

11 (No response.)

12 UNIDENTIFIED SPEAKER: Oh, boy.

13 THE COURT: Mr. Fisher, are you with us today?

14 (No response.)

15 THE COURT: What about Doron Kermanian?

16 (No response.)

17 THE COURT: Doron Kermanian.

18 (No response.)

19 THE COURT: How about Mehernosh Pithawalla?

20 MR. PITHAWALLA: Yes, Judge, I'm here. Good morning.

21 THE COURT: Good morning. Please proceed, sir.

22 MR. PITHAWALLA: Good morning, everyone. Thanks for
23 allowing us to participate on this call.

24 Judge, I think questions are similar to what my
25 previous two individual participants had asked. In today's

1 day and age of technology, it is a little frustrating to see
2 that this has taken five years, from my perspective. But I
3 understand there's a process and we are doing proper due
4 diligence to enter the processes. So, I want to thank
5 everybody who is putting in the hard work for this.

6 I have two questions, Judge. Question No. 1 is:
7 After repeated e-mails and communications with Equitybuilder,
8 they still seem to be not certain of who is qualified as an
9 applicant and who is not in terms of the due diligence. We've
10 sent all the documentation back for the last five years.
11 We've not got a "Yes" or a "No." Unless it is buried
12 somewhere in the communication; and, if that's the case, my
13 sincere apology. So, that's Question No. 1.

14 And Question No. 2 is: How are we going to bifurcate
15 the distribution between the people that have held notes
16 versus the people that have held equity?

17 And last but not least, in the e-mail that was sent,
18 the status report that was sent on Friday, all the key
19 properties that I own on -- via the CTF I Fund have been sold.
20 So, based on that date, do you have any guidance on when a
21 distribution will be made? These are the big concerns, Judge.

22 And, once again, thank you, everybody.

23 THE COURT: All right. Thank you, Mr. Pithawalla.

24 With regard to the difference between equity --
25 people that purchased equity versus notes, that's something

1 that will be resolved as part of the claims process.

2 With regard to whether or not -- if you're a claimant
3 and you submit a claim, if you want to see if there is any
4 additional information that the receiver needs, the best thing
5 to do is to contact the receiver. Okay?

6 As far as whether or not those claims are valid, that
7 is what we're trying -- I'm trying -- that is what the process
8 is designed to ferret out, so that I can rule on particular
9 claims and the validity of particular claims.

10 With regard to the sales of the properties, yes, the
11 properties have been sold and all the funds have been
12 segregated. So, the money has been protected. It is not
13 going anywhere. And the claims process is the process by
14 which we will -- I will determine how the proceeds will be
15 divided up amongst the various claimants.

16 As I noted, not all of the claims can be satisfied,
17 given the fact that the value of the claim exceeds the amount
18 of proceeds that have been collected through the sales. And,
19 so, that's what we're trying to determine.

20 All right. So --

21 MR. PITHAWALLA: Judge, may I ask a question?

22 THE COURT: Yes. Quickly, please.

23 MR. PITHAWALLA: Yeah.

24 So, the question is -- it was our understanding as
25 investors that the note would be a higher-priority security

1 versus the equity. Is that also in line with the process of
2 evaluation of who gets paid or is it going to be different?

3 THE COURT: That is one of the issues that the
4 parties will be raising as part of the claims process.

5 MR. PITHAWALLA: Okay. Thank you, Judge.

6 THE COURT: Thank you.

7 Do we have Sheree Gravely? Sheree Gravely?

8 (No response.)

9 THE COURT: How about Arnold Kameda?

10 MR. KAMEDA: Yes, Judge, I'm here. Can you hear me
11 okay?

12 THE COURT: Yes, we can. Please proceed, sir.

13 MR. KAMEDA: Thank you for this opportunity, Judge
14 John Lee, for us to speak.

15 I'm an investor that invested in multiple properties.
16 And during the latter part of 2017, I invested in a new
17 product that was offered called the South Side Development
18 Fund. And my concern with these particular investments is
19 that they were not specifically or concretely tied to specific
20 properties. They were touted as a mechanism to invest more
21 generically in the investment process of purchasing
22 multi-family units, revamping them and reselling them.

23 And, so, my concern with the South Side Development
24 Fund type of investment is that because they're not concretely
25 tied to specific properties, how are the claimants for South

1 Side Development Fund going to be able to obtain any of their
2 investment back?

3 THE COURT: Okay. Thank you, Mr. Kameda.

4 Mr. Rachlis, is this something that you can address
5 now or is it something you need to look into?

6 MR. RACHLIS: Your Honor, the issues regarding the
7 investments in funds are the types of things that are being
8 evaluated in the claims process. That is part of when we
9 would be presenting position papers and things of that nature.
10 There will be -- much like this issue that was identified by a
11 prior claimant associated with equity versus a promissory
12 note, this is a similar type of question and issue that would
13 be part of the process that is reviewed by the receiver in the
14 claims process.

15 THE COURT: All right. So, I just want to make sure
16 that this is -- the type of funds that Mr. Kameda is
17 referencing are being considered by the receiver as part of
18 the claims process and they're not just completely forgotten;
19 is that correct?

20 MR. RACHLIS: That is absolutely correct.

21 THE COURT: Okay. Thank you.

22 MR. KAMEDA: Thank you for the answer.

23 THE COURT: Thank you, Mr. Kameda.

24 Next let's go to Debbie Lasley. Ms. Lasley, are you
25 on the line?

1 (No response.)

2 THE COURT: How about Jane Shafrin? Ms. Shafrin?

3 MS. SHAFRIN: I'm here.

4 THE COURT: Yes, ma'am.

5 MS. SHAFRIN: I have a simple question.

6 Good morning, everyone.

7 THE COURT: Good morning.

8 MS. SHAFRIN: I'm just wondering if there are any
9 funds left for reimbursement. I own -- I invested in a
10 certain property that's on the list, and it's been sold. But
11 I think it was sold for very little profit or there were very
12 -- very small proceeds from it. And I'm just wondering -- I
13 only owned, according to the paperwork, five-and-a-half
14 percent of that apartment building. Do I have any hope of
15 seeing any returns or should I just move on with my life?

16 THE COURT: Ms. Shafrin, the answer to that is that
17 the -- with regard to what value or how much you will receive
18 from the proceeds of the sales, that will be determined as
19 part of this claims process. And, so, that's not an answer I
20 can easily give you now.

21 But, again, as this process moves forward, I hope
22 that I will be able to establish some rules and guidelines
23 that will provide the parties with some better idea so they
24 can resolve these matters.

25 MS. SHAFRIN: Okay. That's like a non-answer, if you

1 pardon me for saying so.

2 But I'm assuming I get zero. I'm hoping I don't have
3 to pay any more. I'm hoping I don't have to pay any of the
4 costs of prosecuting these crooks. So --

5 THE COURT: With regard --

6 MS. SHAFRIN: If I only have five-and-a-half percent
7 of the apartment house and it needed a lot of work before it
8 even could get sold, then I don't have much hope.

9 THE COURT: So --

10 MS. SHAFRIN: So, I will -- you know, I will -- go
11 ahead.

12 THE COURT: So, I believe -- and the receiver or
13 Mr. Hanauer can correct me if I'm wrong, but there is no -- if
14 you're wondering whether you need to contribute any more money
15 as part of this case, the answer is that you do not. Okay?

16 If the question is whether you should expect to
17 receive any money from this case once all the funds are
18 divided, the only answer I can give you today is at this
19 point, we do not know. And that's what this process is
20 intended to figure out.

21 MS. SHAFRIN: Okay.

22 So, you don't know how you're going to apportion the
23 profits or the proceeds, if any, from each individual building
24 that these crooks purchased. I get that message. The
25 original procedure --

1 THE COURT: Ms. Shafrin, I have established a
2 procedure, and that is what we've been talking about -- the
3 various groups of properties. And we're going to group the
4 properties and deal with the properties in groups. So, there
5 is a procedure. It's just going to take some time.

6 MS. SHAFRIN: Yeah. Because there are people who --

7 THE COURT: Ms. --

8 MS. SHAFRIN: -- really got -- really got shafted by
9 these guys. And I consider myself lucky that I was not in
10 that group. And I think they should be reimbursed if anybody
11 should be, before I get any money, you know. So, that's my
12 attitude. And I hope that that will play through, that the
13 biggest investors in this scam are first in line to get some
14 money back.

15 So, I just wanted to express that. And I won't take
16 any more of your time because this is pretty much what I
17 thought was going on anyhow, based on the e-mails that I get.
18 So, thank you for having this session, but, you know --

19 THE COURT: Thank you, Ms. Shafrin. Thank you for --

20 MS. SHAFRIN: -- I'm lucky I don't need the money.
21 What?

22 THE COURT: Thank you for your input.

23 All right. So, let's move on. How about Therese
24 Tibbits?

25 (No response.)

1 THE COURT: Therese Tibbits?

2 (No response.)

3 THE COURT: What about Gar Weatherhead?

4 (No response.)

5 THE COURT: What about Gary Kucera through his
6 counsel?

7 MR. WEATHERHEAD: Hello, this is Gar Weatherhead.
8 I'm here.

9 THE COURT: Oh, you are there.
10 Yes, Mr. Weatherhead, we can hear you. Go ahead,
11 please.

12 MR. WEATHERHEAD: Okay. Good morning, your Honor.

13 Yeah, I -- you know, you've answered a lot of my
14 questions. I have two additional ones. Number one was: Who
15 is going to be paid first, individual investors or
16 institutional investors? Has that been decided yet?

17 THE COURT: No, that has not. That is one of the
18 biggest questions about -- that is raised as part of the Group
19 1 properties.

20 MR. WEATHERHEAD: Okay. That was my feeling that
21 that's what was taking a lot of time. I guess I was correct
22 with that assumption?

23 THE COURT: That is one of the things that has taken
24 time, yes.

25 MR. WEATHERHEAD: Okay. Okay.

1 And, then, my other question is -- I understand it's
2 going to be a while before we find out whether our claims are
3 coming back or not, but have the funds from the property sales
4 now that all the properties are sold, have they been enough to
5 cover the claims or do they fall way short --

6 THE COURT: They're about 50 percent of what all of
7 the claims are that have been submitted. So, the claims
8 exceed the amount of cash by about -- by two times.

9 MR. WEATHERHEAD: Okay.

10 And, then, last question is, you know, I -- towards
11 the end of the time before the receivership took over, I had,
12 you know, made phone calls back and forth with one of the
13 defendants, Shaun Cohen. And I've been -- the whole time I've
14 been trying to find out what exactly has happened to them as
15 far as punishment. It seems like not much has happened.

16 Is there a way I can find out more about, you know,
17 the penalties or prison or anything these guys are facing?

18 THE COURT: That question I'm going to direct to
19 Mr. Hanauer.

20 Is there anything that is available to Mr.
21 Weatherhead as a victim?

22 MR. HANAUER: Yes. Thank you, your Honor.

23 Good morning, Mr. Weatherhead and the other
24 participants.

25 In terms of the SEC's enforcement action against the

1 Cohens, that action has been complete for sometime now. Judge
2 Lee imposed, basically, all the relief that the SEC requested
3 and was able to obtain against Shaun and Jerry Cohen. That
4 includes injunction relief -- injunctive relief, as well as
5 very significant penalties and disgorgement against them.

6 I can report that Jerry Cohen passed away more than a
7 year ago. So, that, for better or for worse, completely
8 resolves the SEC's case against him.

9 Against Shaun Cohen, we will continue to make every
10 effort to collect on the money judgments that Judge Lee has
11 imposed; and, any money that we do collect, we would make our
12 best efforts to distribute to investors.

13 But that said, the amounts we have been able to
14 collect from Mr. Cohen are not large at this point. And,
15 unfortunately, I cannot speak to any other government steps
16 that are being taken in regards to Shaun Cohen.

17 MR. WEATHERHEAD: Okay. Thank you very much for that
18 update.

19 THE COURT: Thank you, Mr. Hanauer.

20 Now let's turn to Howard Slomka on behalf of Gary
21 Kucera.

22 MR. SLOMKA: Thank you, your Honor.

23 Are you able to hear me okay?

24 THE COURT: Yes, we can.

25 MR. SLOMKA: Excellent.

1 So, I just had a couple of questions. First related
2 to the expenses of the fund in the litigation. You know, we
3 see the fee applications coming in, and I think that -- I
4 understand the process and that's fine. Mr. Duff is doing a
5 good job.

6 I'm curious if there is an estimated or projected
7 total expense and how the expense of this case is going to
8 compare to the \$135 million in claims.

9 THE COURT: I will address that to Mr. Rachlis.

10 MR. RACHLIS: Thank you, your Honor.

11 At this point, we don't have an estimate as to what
12 the total cost will be. It is -- and it's difficult to
13 estimate based on the fact that there are kind of ebbs and
14 flows in regards to the various activities that go on in the
15 receiverships.

16 There was a lot of activity, as you may see, going
17 back historically in terms of issues associated with the
18 operation, management and ultimate disposition of the
19 properties. But having those all sold, those activities are
20 largely, you know, concluded other than kind of wrap-up issues
21 on some of the last properties that were being sold and
22 reconciliation types of questions that are done for an
23 accounting basis.

24 But once -- you know, obviously with that phase
25 having come to pretty much an end, there are other phases of

1 this that involve a lot more activity. For example, there are
2 these -- the claims process, you know, you've seen through the
3 Group 1 activities, as well as recently in regard to the
4 single-claim properties, as well.

5 So, we don't -- we're not able to give an answer as
6 to estimates in that regard. But we can say that, you know,
7 the information on this is updated pretty much quarterly
8 through both status reports that are submitted, as well as the
9 fee applications that are submitted, to the district court
10 before Judge Lee.

11 So, there's a constant roll there that provides
12 fairly up-to-date information on all of those that's submitted
13 every quarter.

14 MR. SLOMKA: Thank you.

15 We are aware of the fee application and the quarterly
16 reports, and they are helpful. But as Mr. Marcus said -- it
17 was the first speaker -- we don't know when this will end.
18 So, we don't know whether the quarterly reports are going to
19 go on for another two quarters or another twenty quarters.
20 So, it would be helpful -- and that's why I only asked for an
21 estimate. And I understand an estimate is hard to give. But
22 it's only an estimate.

23 And I think it would be helpful for all the claimants
24 to know, you know, whether we are looking at forgoing one
25 percent or ten percent or twenty percent of the total pool.

1 That would be helpful to us.

2 My next question is the relationship between the
3 various tranches. Our claim is in Tranche 4. So, it's
4 unclear to me whether this is just a waterfall-type thing
5 where all of Tranche 1 will get paid before the first check is
6 sent to anyone in Tranche 2.

7 And, secondly, do any of the funds move from one
8 tranche to another? And, if it doesn't, then it's possible
9 that one tranche would yield a 90 percent return to its
10 investors and another tranche could yield only a 15 percent to
11 its investors.

12 Do I understand that properly? Is that how it's
13 going to work? Pool by pool, depending on what came in for
14 those properties?

15 THE COURT: Mr. Slomka, at this point in time, while
16 that is something I think that we're going to be talking about
17 after the first group, at this point in time, I do not -- my
18 preliminary impression is that it would not be a waterfall
19 method. In other words, it would not be that so if you're in
20 the later tranches, that even though you have a valid claim,
21 there won't be any money for you because it's been taken up by
22 all of the prior claims.

23 THE COURT REPORTER: Judge, I'm sorry, this is Joe
24 again. Could we ask that they mute their phones?

25 UNIDENTIFIED SPEAKER: Listen to, you know, that law

1 -- all that law thing where all the money got stole from me.

2 THE COURT: If you are on the --

3 UNIDENTIFIED SPEAKER: Hearing from some of the court
4 staff now.

5 (Brief pause.)

6 THE COURT: Mr. Slomka, any other questions?

7 MR. SLOMKA: I didn't quite hear the end of yours. I
8 understand that you're saying that the later tranches won't be
9 hurt by the earlier ones. But are all of the 60 to \$70
10 million of collected assets then going to be divided equally
11 between the tranches?

12 THE COURT: At this point -- that is not the purpose
13 of the tranches. The purpose of the tranches wasn't to have
14 some sort of pro rata distribution between all the tranches.
15 It was a way for us to most expediently resolve some of the
16 claims because the tranches have -- either raise similar
17 issues or have similar investors or come from a similar set of
18 facts.

19 So, the purpose of the tranche was not as a way of
20 trying to determine how to distribute the funds. The
21 distribution of how the funds will be distributed is a
22 determination that will be made later.

23 MR. SLOMKA: Okay.

24 And on behalf of all the claimants, we're interested
25 in knowing, you know, how much later.

1 And, then, my last question on that is mediation was
2 mentioned at the beginning of the call. And if you could just
3 address how that mediation would work. Would each claimant
4 have the ability to mediate its own claim and exit the pool
5 with a check or would mediation require a global settlement?

6 THE COURT: That is something that I haven't really
7 discussed with the attorneys and, frankly, I haven't really
8 discussed with the receiver.

9 I think that after the rulings in the first group, it
10 would be a -- it would present a good opportunity for everyone
11 to get together and talk about if there is a way to mediate
12 this. And I think the mediation would probably have to take
13 globally to see if we can get some relief out to the various
14 claimants in some sort of way that would be faster than going
15 through the remainder of the claims process.

16 So, those were just kind of preliminary thoughts on
17 my part, Mr. Slomka, and nothing has been set or decided with
18 regard to what a mediation program might look like.

19 MR. SLOMKA: Okay. Thank you for the opportunity to
20 be heard on the status call. Appreciate it.

21 THE COURT: All right. Thank you.

22 And, so, let's go back through the list of people
23 just to see if anyone has come back or signed on.

24 Roswitha Ennema, are you on phone?

25 (No response.)

1 THE COURT: Jim Tutsock?

2 (No response.)

3 THE COURT: Dean Atanasoski?

4 UNIDENTIFIED SPEAKER: Investor, equity versus note;
5 investor versus institution.

6 THE COURT: Yaron Fisher.

7 (No response.)

8 THE COURT: Doron Kermanian.

9 (No response.)

10 THE COURT: Sheree Gravely.

11 (No response.)

12 THE COURT: Debbie Lasley.

13 (No response.)

14 THE COURT: Therese Tibbits.

15 (No response.)

16 THE COURT: That is the entire list that I have of
17 people that have submitted requests to be heard.

18 At this point, Mr. Rachlis, is there anything else to
19 report from the receiver?

20 MR. RACHLIS: No, your Honor.

21 THE COURT: Is there anything --

22 MS. WINE: Your Honor, this is Jodi Wine. I just
23 wanted to mention that Ms. Gravely had contacted the receiver
24 saying she was having trouble with the video link, and we did
25 send her the telephone number to dial in.

1 THE COURT: Okay.

2 Well, this will not be the only opportunity for -- I
3 plan to have other opportunities for claimants as this process
4 proceeds to raise whatever questions they have, as well.

5 Mr. Hanauer, anything else for the SEC at this point?

6 MR. HANAUER: No. Thank you, your Honor.

7 THE COURT: Anything for the attorneys who have
8 entered their appearance today?

9 MR. McCLAIN: Your Honor, Andrew McClain on behalf of
10 U.S. Bank as trustee.

11 Specifically related to the receiver's recent
12 submission on the single-claims process, the position paper
13 confirms what we've --

14 THE COURT: Mr. McClain, can I tell you that I have
15 not looked at it. Okay? And, so, if you want a status
16 hearing specifically on that, talk to the receiver and then
17 reach out to Ms. Acevedo, my courtroom deputy. Okay?

18 MR. McCLAIN: Very good, your Honor. I will do that.
19 Thank you.

20 THE COURT: All right. Thank you.

21 Anyone else?

22 (No response.)

23 THE COURT: Thank you, everyone, for your
24 participation in this call -- oh, one other thing.

25 Mr. Duff, I do think what Mr. Slomka raised about

1 kind of an estimate or forecast, however uncertain -- I know
2 there's a lot of uncertainty -- that I would like you to kind
3 of start thinking about that, because I think it might be
4 helpful, with all the various caveats that you and Mr. Rachlis
5 kind of believe that you need. But it's certainly something
6 that I would like to talk to and explore with the receiver and
7 you as part of this process. Okay?

8 MR. DUFF: Understood, your Honor.

9 THE COURT: All right.

10 Thank you, everyone. Have a good day.

11 * * * * *

12
13 I certify that the foregoing is a correct transcript from the
14 record of proceedings in the above-entitled matter.

15 /s/ Joseph Rickhoff
16 Official Court Reporter

May 20, 2022